

Edward Kline  
In Pro Per  
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2007 APR 16 A 11:04

U.S. BANKRUPTCY COURT  
PATRICIA GRAY, CLERK

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,  
LLC,

USA SECURITIES, LLC,  
Debtors.

Affects:

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

*OBJECTION*  
AMENDED NOTICE OF HEARING  
REGARDING SEVENTEENTH  
OMNIBUS OBJECTION OF USA  
COMMERCIAL MORTGAGE  
COMPANY TO CLAIMS ASSERTING  
SECURED STATUS

Hearing Date: April 26, 2007  
Hearing Time: 9:30 a.m.

I, Edward Kline, in Pro Per, am filing an objection to the above ~~re: USA~~ "AMENDED NOTICE OF HEARING REGARDING SEVENTEENTH OMNIBUS OBJECTION OF USA COMMERCIAL MORTGAGE COMPANY TO CLAIMS ASSERTING SECURED STATUS).

1 As a Direct Lender to MARGARITA ANNEX, I dispute  
2 this allegation that my loan is not secured by USA BMC.  
3 I filed "Proof of Claim" by Certified Mail and it was  
4 received by BMC on 10/10/06. Also filed on this case  
5 06-10725 LBR were Proof of Investment in Margarita Annex,  
6 List of Interest Due Creditor, copy of Deed of Trust (first  
7 page), "Feedback Form", and self addressed stamped  
8 envelope.

9 USACM has been paid for a year to service loans  
10 and resolve problems related to loans in default. It was  
11 reported in an open meeting that five loans were resolved,  
12 that they were making progress with other debtors, and  
13 and that sufficient progress had been made to continue to  
14 negotiate with the debtors. In addition, secrecy of  
15 negotiations were requested by USACM, and over \$200,000 to  
16 appraise these properties.

17 Now comes USACM BMC Liquidating Trust objecting to  
18 my claim of the USACM having responsibility for the  
19 security of this loan.

20 I hope Bankruptcy Court does not allow USACM BMC  
21 Liquidating Trust to violate their agreements, including  
22 their "Loan Agreement" (Page 22, Line 8.8) in which USACM  
23 promises to "Administer loans and make all necessary  
24 demands on Borrower". They have not discharged their duties  
25 of notifying the Trustee of the Borrower's failure to pay  
26 within 30 days, or request the Trustee (First American  
27 Title Insurance) to foreclose on the property.

1 The Court has precluded me from doing the above,  
2 leaving it up to USACM to act in the Lender's behlf. I  
3 believe they have not done so, even given the tools to do  
4 so by the Court.

5 Relieving USACM from its fiduciary responsibility  
6 would weaken the link between the Lender and the Borrower  
7 who is in default, making it more difficult for the Lender  
8 to receive payment, and tilt the advantage to the Borrower  
9 as there is now no legal entity to demand foreclosure by  
10 the Trustee.

11 In addition, Attorneys for this Liquidation Trust  
12 have all papers previously filed by me, and received by  
13 BMC on 10/10/06.

14 See attached letter from USACM to me dated 7/7/05  
15 regarding extension of loan to Mr. King (Margarita Annex)  
16 indicating USA has my Power of Attorney regarding this  
17 loan and therefore is responsible to me to secure this loan.

18 It should be noted that all investors in this loan are  
19 "small investors", while the Committee to represent investors  
20 are all "large investors" (except for USA Capital First Trust  
21 Deed Fund. (See Loan Agreement)

22 It appears that USA does have assets in the amount of  
23 \$3.5 million in this loan, contrary to the claim in this  
24 action Therefore there is a conflict of interest, curiosly,  
25 and their petition should be denied on the Margarita Annex  
26 loan. (See Page 4, lines 11 and 12.)

27 *Edward Kling*

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AND  
ROCA  
LLP  
LAWYERS

E-Filed on 3/20/07

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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,

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- ☐ All Debtors  
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CHAPTER 11

Jointly Administered Under Case No. BK-S-  
06-10725 LBR

AMENDED NOTICE OF HEARING  
REGARDING SEVENTEENTH  
OMNIBUS OBJECTION OF USA  
COMMERCIAL MORTGAGE  
COMPANY TO CLAIMS ASSERTING  
SECURED STATUS

Hearing Date: April 26, 2007  
Hearing Time: 9:30 a.m.

THE USACM LIQUIDATING TRUST IS OBJECTING TO THE CLAIM THAT  
YOU FILED. THIS IS NOT AN OBJECTION TO YOUR STATUS OR CLAIM AS  
A DIRECT LENDER, OR TO THE SECURITY INTEREST YOU AS A DIRECT  
LENDER HAVE IN YOUR BORROWERS' PROPERTY AS COLLATERAL.  
RATHER, IT ARGUES THAT YOUR CLAIM IS NOT SECURED BY PROPERTY  
OF THE BANKRUPTCY ESTATE, WHICH DOES NOT INCLUDE THE  
BORROWERS' PROPERTY. THE DEADLINE TO RESPOND TO THE

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1 **OBJECTION IS APRIL 19, 2007. PLEASE DO NOT CONTACT THE CLERK OF**  
2 **THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF YOUR CLAIM.**  
3 **QUESTIONS REGARDING THE AMOUNT OF A CLAIM OR THE FILING OF A**  
4 **CLAIM SHOULD BE DIRECTED TO BMC GROUP AT 888-909-0100, OR**  
5 **WWW.BMCGROUP.COM/USACMC, or to the undersigned counsel.**

6 **NOTICE IS HEREBY GIVEN** that the USACM Liquidating Trust, by and  
7 through its counsel, has filed a Seventeenth Omnibus Objection to Claims Asserting  
8 Secured Status (the "Objection"). The USACM Liquidating Trust has requested that this  
9 Court enter an order, pursuant to section 502 of title 11 of the United States Code (the  
10 "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the  
11 "Bankruptcy Rules"), disallowing the secured creditor status of approximately 1,600  
12 alleged secured claims asserting claims that aggregate over \$296 million.

13 Specifically, the USACM Liquidating Trust does not object to these claims being  
14 Direct Lender claims. Rather, the Trust objects to the secured status asserted in the proofs  
15 of claim listed on the Exhibit A to the Objection, which is served with this Notice. The  
16 objection asserts that the listed claims are not secured by property of the USACM estate,  
17 although the loans that are the basis of the claims may be secured by property of the loan  
18 Borrowers. The Trust requests that the Court reclassify these claims as general unsecured  
19 claims (subject to additional objections). As explained in the motion, the USACM  
20 Liquidating Trust may have other objections to the claims that will be filed later.

21 **NOTICE IS FURTHER GIVEN** that the hearing on the Objection will be held  
22 before the Honorable Linda B. Riegler, United States Bankruptcy Judge, in the Foley  
23 Federal Building, 300 Las Vegas Boulevard South, Courtroom 1, Las Vegas, Nevada, on  
24 **April 26, 2007, at the hour of 9:30 a.m.**

25 **NOTICE IS FURTHER GIVEN THAT THE HEARING SET ON APRIL 26,**  
26 **2007, WILL BE HELD FOR THE PURPOSE OF STATUS CHECKS AND**

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1 **SCHEDULING EVIDENTIARY HEARINGS ONLY. NO ARGUMENTS WILL BE**  
2 **HEARD ON THAT DATE.**

3 **NOTICE IS FURTHER GIVEN** that any response to the Objection must be filed  
4 by **April 19, 2007** pursuant to Local Rule 3007(b), which states:

5 If an objection to a claim is opposed, a written response must be filed and  
6 served on the objecting party at least 5 business days before the scheduled  
7 hearing. A response is deemed sufficient if it states that written  
8 documentation in support of the proof of claim has already been provided to  
the objecting party and that the documentation will be provided at any  
evidentiary hearing or trial on the matter.

9 If you object to the relief requested, you *must* file a **WRITTEN** response to this  
10 pleading with the Court. You *must* also serve your written response on the person who  
11 sent you this notice.

12 If you do not file a written response with the Court, or if you do not serve your  
13 written response on the person who sent you this notice, then:

- 14
- 15 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
  - 16 • The Court may *rule against you* without formally calling the matter at the  
17 hearing.

18 Dated: March 20, 2007.

19 **LEWIS AND ROCA LLP**

20 By: /s/ RC (#6593)

21 Susan M. Freeman, AZ 4199 (*pro hac vice*)

22 Rob Charles, NV 6593

23 3993 Howard Hughes Parkway, Suite 600

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*Counsel for USACM Liquidating Trust*

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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
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Case No. BK-S-06-10725-LBR  
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Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

**CHAPTER 11**

Jointly Administered Under Case No. BK-S-06-10725 LBR

**SEVENTEENTH OMNIBUS OBJECTION OF  
THE USACM LIQUIDATING TRUST TO  
CLAIMS ASSERTING SECURED STATUS**

Hearing Date: April 26, 2007  
Hearing Time: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") hereby files its Seventeenth Omnibus Objection to Claims Asserting Secured Status ("Objection") and moves this Court, pursuant to § 502 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing approximately 1,600 alleged Secured Claims asserting Claims against USA Commercial Mortgage Company ("USACM") that aggregate over \$296 million. The USACM Trust is not, by this filing, objecting at this time to any of the claims as unsecured

1 claims, but reserves the right to do so. This Objection is supported by the Court's record  
2 and explained in the following Memorandum.

### 3 I. JURISDICTION

4 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
5 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
6 proceeding under 28 U.S.C. § 157(b)(2)(B).

7 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
8 and Bankruptcy Rule 3007.

### 9 II. BACKGROUND

10 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
11 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital  
12 Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC  
13 ("FTDF" and together with DTDF, the "Funds") (collectively the "Debtors"), filed  
14 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors  
15 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections  
16 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was  
17 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
18 ("Mesirow"), who serves as the Chief Restructuring Officer.

19 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
20 business of underwriting, originating, brokering, funding and servicing commercial loans  
21 primarily secured by real estate, both on behalf of investors and for its own account.

22 3. This business included the solicitation of individual investors to purchase  
23 fractional interest in loans that USACM originated and then serviced. These investors,  
24 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
25 USACM's bankruptcy case and in this Objection.  
26



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1           4.     Although USACM serviced and sometimes originated the loans in which the  
2 Direct Lenders invested, USACM was not a borrower on these loans.

3           5.     On September 14, 2006, the Court entered its Order Setting Deadline to File  
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The  
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
6 the deadline ("Bar Date") for creditors to file proof of claims.

7           6.     On September 25, 2006, the Debtors served a copy of the Bar Date Order on  
8 their service lists [Docket No. 1358]. All Direct Lenders were served with a copy of the  
9 Bar Date order as well [Docket No. 1358].

10          7.     On November 6, 2006, a stipulation was filed and an order entered extending  
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
12 No. 1729].

13          8.     On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15          9.     Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan")  
16 [Docket No. 1799] provides the following deadlines for objections to Claims:

17               (A)   for any and all Claims and Equity Interests to which the  
18 General Bar Date applies, ninety (90) days after the Effective Date; (B) for  
19 any and all Claims to which the Administrative Claims Bar Date or the  
20 Professionals Administrative Bar Date applies, thirty (30) days after the  
21 expiration of the respective Bar Date; and (C) for any and all Claims to  
22 which the Bar Date applicable under section B.3 of Art. V of the Plan  
23 applies, thirty (30) days after the expiration of that Bar Date.

24          10.    USACM's claims and noticing agent received approximately 2,436 proofs of  
25 claim as of the January 13, 2007 Bar Date, asserting claims totaling more than  
26 \$997,000,000, plus unknown amounts based on unliquidated Claims.

          11.    Under the Plan, the USACM Trust is the successor to USACM with respect  
to standing to seek allowance and disallowance of Claims.



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1           3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
2 3001(f). However, once an objection to the proof of claim controverts the presumption,  
3 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
4 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
5 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff'd*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996). The ultimate  
6 burden of proof as to the validity of a proof of claim “remains at all times upon the  
7 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
8 1039 (9<sup>th</sup> Cir. 2000).

#### 10                                   IV. OBJECTIONS TO CLAIMS

11           1. As more particularly described herein, the USACM Trust seeks in this  
12 Objection to reclassify the Alleged Secured Claims as general unsecured Claims.

13           2. These Claims may be the subject of multiple objections herein for any of the  
14 reasons stated in this Objection. These Claims may also be subject to prior or  
15 subsequently filed objections, and this objection is without prejudice to any other  
16 objection by any party in interest, including the USACM Trust.

17           3. The USACM Trust reserves the right to further object to any and all Claims,  
18 whether or not the subject of this Objection, for allowance and/or distribution purposes on  
19 any other grounds. The USACM Trust further reserves the right to modify, supplement  
20 and/or amend this Objection as it pertains to any Claim or claimant herein.

21           4. For the convenience of the parties, and pursuant to the Court’s direction, the  
22 USACM Trust has broken down its objections to secured claims into groups of no more  
23 than 50 claimants each. Thus this objection is one of a series of many objections to  
24 Claims that assert fully or partially secured status.

25           5. Exhibit A contains a partial list of the Alleged Secured Claims, filed by  
26 various parties, most of whom are Direct Lenders, asserting that their Claims are secured.

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1 The USACM Trust objects to these claims on the basis that these Claims are not secured  
2 by property of the USACM estate, although they may well be secured by property owned  
3 by their Borrowers. Secured claims are claims "by creditors against the estate that are  
4 secured by a lien on property in which the estate has an interest." *United States v. Ron*  
5 *Pair Enters., Inc.*, 489 U.S. 235, 240 (1989). None of the Claims listed on Exhibit A are  
6 secured by such a lien, and the claimants have offered no evidence in support of their  
7 contention. Thus none of these claims are entitled to secured status in this bankruptcy  
8 case, and should be classified as general unsecured Claims, subject to further objection.  
9

10 **V. CONCLUSION**

11 For the reasons discussed above, the USACM Trust objects to the secured status  
12 asserted in the proofs of claim listed on Exhibit A attached to this Objection and requests  
13 that the Court reclassify these claims as general unsecured Claims (albeit subject to  
14 possible additional objections). The USACM Trust also requests such other and further  
15 relief as is just and proper.

16 Dated: March 20, 2007.

17 **LEWIS AND ROCA LLP**

18  
19 By: /s/ RC (#6593)

20 Susan M. Freeman, AZ 4199 (*pro hac vice*)

21 Rob Charles, NV 6593

22 3993 Howard Hughes Parkway, Suite 600

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*Counsel for USACM Liquidating Trust*

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AND  
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LLP  
LAWYERS

**EXHIBIT A**

**[Exhibit A is NOT attached hereto. All of your claims that appear on Exhibit A to this Objection are listed on the Cover Sheet found at the front of this package. A copy of this entire objection including the complete Exhibit A may be found on the Court's Docket, which can be accessed for free at [WWW.BMCGROUP.COM/USACMC](http://WWW.BMCGROUP.COM/USACMC), then by clicking on the link entitled "Court Docket" found in the upper right hand corner.]**

RECEIVED AND FILED

Name, Address, Bar No., Telephone No. and E-mail Address

E-filed on: 4/16/07  
2007 APR 16 A 11:13

U.S. BANKRUPTCY COURT  
PATRICIA GRAY, CLERK

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re: (Name of Debtor)

USACM

Debtor(s)

(Name of Plaintiff)

Plaintiff

VS.

(Name of Defendant)

Defendant

Case No. BK - 5 - 06 - 10725 LBR

Chapter ☒ 7 ☐ 11 ☐ 13

Adversary No.: \_\_\_\_\_

Hearing Date:  
Time: APR 126, 2007  
930 AM

CERTIFICATE OF SERVICE

Do not use this form to prove service of a summons and complaint. To prove service of a summons and complaint use the certificate in the court form entitled "Adversary - Summons and Notice of Scheduling Conference in an Adversary Proceeding" which is available on the court's website at [www.nvb.uscourts.gov](http://www.nvb.uscourts.gov).

1. On 4/16/07 (date) I served the following document(s) (specify):

OBJECTION TO OBJECTION

FOX HILLS 214 LLC

BY MAIL

Edward R. Rine